

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
BIG STONE GAP DIVISION**

**Norfolk Southern Railway Company,**

**Plaintiff,**

**v.**

**Virginia Fuel Corporation,**

**Defendant.**

**CASE NO:**

**COMPLAINT**

Plaintiff, Norfolk Southern Railway Company ("Norfolk Southern"), files this Complaint against Defendant, Virginia Fuel Corporation ("VFC"), and in support of its causes of action avers as follows:

**PARTIES**

1. Norfolk Southern is a corporation organized under the laws of the Commonwealth of Virginia, with its principal place of business in Norfolk, Virginia. Norfolk Southern operates as an interstate rail carrier subject to the jurisdiction of the U.S. Surface Transportation Board, and is governed by the provisions of the Interstate Commerce Act, 49 U.S.C. §§ 10101, *et seq.*

2. VFC is a corporation incorporated under the laws of the state of Delaware and conducts business within this judicial district.

**JURISDICTION**

3. Jurisdiction in this matter is based upon 28 U.S.C § 1337 as this is a cause of action arising under the Interstate Commerce Act, 49 U.S.C. §§ 10101 *et seq.*

## VENUE

4. Venue properly lies in this district under 28 U.S.C. §1391(b)(1) because the defendant resides in and is subject to personal jurisdiction in this judicial district.

## CAUSE OF ACTION

### (Failure to Pay Rail Carrier Freight Charges)

5. Norfolk Southern incorporates all preceding paragraphs as if set forth fully at length herein.

6. The subject matter of this action stems from incidental freight charges assessed pursuant to applicable tariffs governing the common carriage of freight by Norfolk Southern, an interstate rail carrier, as mandated by 49 U.S.C. §11101.

7. Pursuant to VFC's request, Norfolk Southern transported freight via interstate rail on several occasions between September 2011 and March 2012.

8. The freight Norfolk Southern transported at VFC's request was coal, the interstate rail transportation of which is subject to the exclusive jurisdiction and regulation of the U.S. Surface Transportation Board.

9. Norfolk Southern presented VFC with freight bills for the incidental freight charges associated with the improper overloading of coal in the amount of \$28,225.00, and demanded payment in accordance with the rates set forth in the applicable tariffs and bills of lading at issue in this case, as well as 49 U.S.C. §11101.

10. Although demand has been made for payment of the incidental freight charges, VFC has failed and refused to pay.

**WHEREFORE**, Norfolk Southern Railway Company respectfully demands that judgment be entered in its favor and against defendant, Virginia Fuel Corporation, in the amount of \$28,225.00, as well as any additional charges which may accrue up until the time of judgment, together with costs, attorney's fees, and such other relief as the Court may allow.

Dated: August 29, 2012.

NORFOLK SOUTHERN RAILWAY COMPANY

By Counsel

Wade W. Massie  
VSB No. 16616  
PENN, STUART & ESKRIDGE  
P.O. Box 2288  
Abingdon, Virginia 24212  
Telephone: 276/628-5151  
Facsimile: 276/628-5621  
[wmassie@pennstuart.com](mailto:wmassie@pennstuart.com)

By /s/ Wade W. Massie  
Wade W. Massie

**OF Counsel**

Jeffrey D. Cohen  
Eric C. Palombo  
KEENAN COHEN & HOWARD P.C.  
One Pitcairn Place  
165 Township Line Road, Suite 2400  
Jenkintown, Pennsylvania 19046  
Telephone: 215/609-1110